



November 2008

European Social Charter

European Committee of Social Rights

Conclusions XIX – 1 (TURKEY)

Articles 1, 9, 10 and 18 of the Charter

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts “conclusions” and in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee figure in the General Introduction to the Conclusions¹.

The European Social Charter was ratified by Turkey on 24 November 1989. The time limit for submitting the 14th report on the application of this treaty to the Council of Europe was 31 October 2007 and Turkey submitted it on 29 February 2008. On 17 June 2008, a letter was addressed to the Government requesting supplementary information regarding Article 1§3. The Government did not submit any supplementary information.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.² It concerned the accepted provisions of the following articles belonging to the thematic group “Employment, training and equal opportunities”:

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to education, training and employment (Article 15)
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 1 of the Additional Protocol).

Turkey has accepted these articles, with the exception of Article 15 and Article 1 of the Additional Protocol.

The applicable reference periods were:

- 1 January 2003 – 31 December 2006 for Article 18;
- 1 January 2005 – 31 December 2006 for Articles 1, 9 and 10.

The present chapter on Turkey concerns 13 situations and contains:

- 6 conclusions of conformity: Articles 10§1, 10§2, 10§3, 10§4, 18§1 and 18§4;
- 5 conclusions of non-conformity: Articles 1§2, 1§4, 9, 18§2 and 18§3.

In respect of the 2 other situations concerning Articles 1§1 and 1§3, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the provisions in question.

The next Turkish report deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The deadline for the report was 31 October 2008.

¹ The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

² Decision adopted at the 963rd meeting of the Ministers’ Deputies on 3 May 2006.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information provided in Turkey's report.

Employment situation

The Committee notes that, according to Eurostat, growth slowed in Turkey during the reference period, from 8.9% in 2004 to 6.1% in 2006.

The employment rate was stable (45.9% in 2006), as was the female employment rate (23.9% in 2006). The Committee notes that these rates are markedly lower than the EU-15 average (66.2% and 58.7% respectively in 2006).

Whereas the general and youth (15-24) unemployment rates fell, from 9% in 2004 to 8.4% in 2006 and from 17.3% in 2004 to 16% in 2006 respectively, the female rate rose slightly, from 8.2% in 2004 to 8.4% in 2006.

Long-term unemployment as a percentage of total unemployment decreased during the reference period, from 39.4% in 2004 to 30.2% in 2006 (the EU-15 average was 42.1% in 2006).

The Committee asks again for up-to-date information on the unemployment rate of persons with disabilities.

Employment policy

According to the report, national employment policy priorities during the reference period were notably aimed at:

- introducing new rules on flexible employment arrangements;
- combating unemployment.

The report again describes the specific measures taken to assist disadvantaged groups (including young people, persons with disabilities and former prisoners).

With regard to young people, measures were mainly aimed at remodelling the vocational education system to smooth the transition to working life. The Committee asks what other measures are planned to combat youth unemployment.

According to the report, there are numerous barriers to the employment of women in Turkey including the difficulty of reconciling work and private life and discrimination against women. The report concedes that there is a large gap between men and women in the employment field. It describes a number of relevant initiatives such as the adoption of legislation that provides for child-minding services and the launch of a project, in co-operation with the European Commission, to get women into the labour market. The Committee asks for the next report to give details of any other measures that are planned in this field.

Act No. 4857, which was adopted during the reference period, establishes minimum quotas for the employment of disabled persons by companies with over 50 employees or by public sector employers (4% for private companies, 3% for the public sector). Employers' contributions have also been reduced for companies taking on people with disabilities. Another specific project, the Rainbow Project, was launched in about thirty towns and cities in 2006 and is intended to improve access for disabled persons to vocational training.

The same type of quota system has been introduced for former prisoners (for whom the minimum quota has been set at 6%) and there are other measures whose aim is to make it easier for former prisoners to re-integrate. As a result, a total of 2,396 former prisoners had taken part in training and rehabilitation sessions since 2002.

It is acknowledged in the report that the employment situation is difficult on the whole, particularly because of the drop in employment in the agricultural sector and the problems of retraining caused by a number of company closures.

The Committee asks what measures are planned to help the long-term unemployed to get back to work. In view of the low level of employment among 55-64 year-olds (31% in 2005), it also asks what steps are planned to address this problem.

The Committee notes that a training agency was set up during the reference period. According to the report, 50,059 people took part, during the reference period, in a training course held in the context of a programme jointly funded by the European Union. 7,463 of these subsequently found work.

The activation rate of unemployed persons was 48.3% in 2005. The Committee again asks for detailed information in the next report on the total number of beneficiaries of active measures. It also asks once more how much time elapses on average between a person registering as unemployed and receiving an offer of an active measure.

Despite the Committee's repeated requests, there is no information in the report on the total amount of spending on active and passive employment policy. According to the report spending on active measures in 2005 amounted to 0.7% of GDP.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The Committee takes note of the information provided in Turkey's report.

1. Prohibition of discrimination in employment

The Committee considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

Under Article 10 of the Constitution all individuals are equal before the law without discrimination based on language, race, colour, sex, political opinion, philosophical belief, religion, sect or any other similar ground. Article 5 of the Labour Code (Law No. 4857), on the "principle of equal treatment", prohibits all discrimination on the same grounds. Section 14 of the Disabled Persons Act prohibits discrimination against persons with disabilities during recruitment procedures. Difference in treatment is also banned in the workplace unless it works in favour a person with a disability. Employers are also required, under this section, to install equipment for the persons with disabilities wherever possible.

The Committee notes that discrimination on the grounds of age and sexual orientation do not figure in the list of grounds for discrimination prohibited by the legislation. As the report does not contain the information requested in previous conclusions concerning the prohibition of these two grounds for discrimination, the Committee repeats its request, asking in particular whether the said "any other similar ground" includes these two grounds for discrimination according to Turkey and what measures have been taken to combat this type of discrimination.

The right of women and men to equal pay for equal work is considered under Article 4§3 (see Conclusions XVIII-2).

According to the report, the legislation covers all sectors of employment. The only exceptions authorised to the prohibition of discrimination are those connected with positive discrimination, particularly those designed to protect women or workers under the age of 18.

The Committee notes that the concepts of direct and indirect discrimination are not defined in legislation. It asks again whether and how they are interpreted by the courts.

The Committee indicates that in disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. Workers who consider themselves to have suffered discrimination are entitled to bring court proceedings for compensation. In such cases the law provides for the reversal of the burden of proof. Where an employee alleges that discriminatory practices have occurred, it is for the employer to demonstrate that there was no discrimination.

Under the Labour Code, employment relationships may only be terminated for valid reasons (Article 18) and provided that the grounds for discrimination listed in the Code are not considered to apply. The Committee notes, however, that this Article restricts protection to employees with an indefinite-term contract and a length of service of at least six months, working in a company with over 30 employees. The Committee asks what protection is provided for employees on fixed-term contracts or with fewer than six months' service or those working for a company with fewer than 30 employees.

Under Article 1§2 of the Charter, compensation must be effective and proportionate and act as a deterrent. It follows that imposing an upper limit may mean in some cases that the compensation awarded is not commensurate with the loss or damage actually incurred and may not be sufficiently dissuasive for the employer. The Labour Code makes provision for several types of compensation. Where employees have been

dismissed unlawfully, they may be awarded a sum up to the equivalent of three times what they would have earned during the notice period (Article 17§6). In addition to this, in cases of infringements of equal treatment, employees may claim compensation equal to up to four months' wages (Article 5§6). If the court considers that the reason given by the employer is not justified, the employer must reinstate the employee within a month or pay compensation equal to between four and eight months' wages. Where a court or a special arbitration board decides that the termination of the employment relationship is not valid, it also determines the amount of compensation to be awarded by the employer if the employee no longer has a job. The employee is paid the wages and other sums owed to him or her for no more than four months during the period when he or she was not employed. Once the court or the special arbitration board has decided that an employee must be reinstated, the employee has ten days to ask his or her employer to reinstate him or her. If he or she fails to make the request within this deadline, the termination of the contract by the employer is considered valid (Article 21). In the event of discrimination connected with membership or non-membership of a trade union (which is prohibited by Trade Unions Act No. 2821¹), employers are required to pay compensation equal to at least one year's wages.

In the light of these provisions, the Committee considers that the situation is not in conformity with the Charter since, with the exception of cases where discrimination is connected with membership or non-membership of a trade union, there is an upper limit on the compensation awarded to employees who have suffered discrimination.

The Committee notes that employers who infringe Article 5 of the Labour Code on equal treatment may be ordered to pay a penalty of 50 Turkish lira (TRY) (€ 26) per employee. Furthermore, the Criminal Code provides for a six-month prison sentence or a fine.

The Committee points out that under Article 1§2, organisations, associations and other legal entities must be entitled to institute proceedings on behalf or in the service of someone who considers themselves to have been the victim of discrimination. It notes that according to the report, this possibility exists.

According to the report, there is no specific body to promote equal treatment in Turkey. The report merely mentions several bodies which work in the general human rights field (such as the Ministry responsible for human rights, the Prime Minister's human rights office, the provincial and district human rights commissions and the consultative committee on human rights). Consequently, the Committee asks again whether the authorities plan to set up bodies charged specifically with promoting equal treatment.

The Committee points out that under Article 1§2 of the Charter, States Parties may make foreign nationals' access to employment subject to possession of a work permit, but they may not issue a general ban on nationals of States Parties occupying jobs for reasons other than those set out in Article 31. Restrictions on the rights embodied in the Charter are only acceptable if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society to safeguard the rights and freedoms of others or to protect the public interest, national security, public health or morals. The only jobs from which foreigners may be barred are therefore those that are inherently connected with the protection of law and order or national security and involve the exercise of public authority.

The Committee found previously that the situation was not in conformity in this respect because nationals of other parties to the Charter are excluded from several categories of employment (Conclusions XVI-1). It notes that Act No. 2007/1932 on trades and occupations reserved for Turkish citizens has been repealed. However, restrictions on access to occupations including that of doctor, dentist, pharmacist, seaman, docker, ophthalmologist and veterinarian still apply. The Committee considers therefore that the situation is still not in conformity with Article 1§2 of the Charter. It repeats its request for up-to-date information on categories of employment reserved for Turkish nationals.

The Committee has repeatedly requested information on the rules governing the vetting of certain categories of staff of public bodies and institutions to obtain information on any ideological or subversive activities they may be involved in. The report does not contain any information on these rules. The Committee emphasises how essential such rules are to provide a legal framework for vetting and ensure that it does not result in discrimination against certain categories of person. It therefore repeats its request.

2. Prohibition of forced or compulsory labour

The Committee has found previously that the situation was not in conformity with Article 1§2 because under Article 1467 of the Commercial Code, captains may use force to ensure that their ship is properly run and

¹ Turkey has not accepted Article 5 of the Charter.

discipline is maintained. It notes that according to the report, a new Commercial Code is being drawn up and that this article will no longer be included. However, as it is still in force for the present, the Committee concludes again that the situation is not in conformity with Article 1§2 of the Charter.

Prison work

According to the report, convicted prisoners may work in workshops or work centres and are paid wages of an amount set by the prison authorities. Prisoners cannot be forced to work. Article 1§2 of the Charter requires strict regulation of prison work, in terms of remuneration, working hours and social security, particularly when the prisoners work for private employers. Prisoners may only be employed in workshops run by private companies with their consent and in conditions as close as possible to an employment relationship freely entered into (Conclusions XVIII-1).

As the report does not contain the information requested, the Committee again asks the government to answer the questions on prison work in the general introduction to Conclusions XVIII-1, namely:

- Can a prisoner be required to work (irrespective of consent):
 - A. for a private undertaking/enterprise
 - i. within the prison?
 - ii. outside the prison?
 - B. for a public/state undertaking
 - i. within the prison?
 - ii. outside the prison?
- What types of work may a prisoner be obliged to perform?
- What are the conditions of employment and how are they determined?
- 3. Other aspects of the right to earn one's living in an occupation freely entered upon

Martial law and state of emergency legislation

The Committee found previously that the situation was not in conformity with Article 1§2 because, under certain provisions of Martial Law No. 1402/1971 as amended by Act No.4045/1994 (Section 2) and Act No. 23935/1983, it was possible to suspend or transfer civil servants or local government employees on the ground that their employment posed a threat to security in general, law and order or public safety, or that their work was not necessary. The Committee considered that this legislation went beyond what was permitted by Article 31 of the Charter (see Conclusions XVI-1 for a full description of the situation).

According to the report, the Martial Law has been amended to grant the persons concerned the right to appeal. However, there is no mention in the report of any other change to the law and, in particular, of the repeal or amendment of the provision enabling civil servants or local government employees to be suspended or transferred because their work is not necessary. The Committee reiterates its view that, because of the imprecise manner in which it is described, this circumstance cannot be considered to fall within the scope of Article 31 of the Charter (Conclusions XVI-1, Turkey). It considers therefore that the situation is still not in conformity with Article 1§2 of the Charter in this respect.

Privacy at work

The Committee asks for information to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated with or result from the employment relationship (see observations on Article 1§2, general introduction to Conclusions XVIII-1, §§13-21).

Restrictions linked to the fight against terrorism

The Committee points out that in its previous conclusions it considered that in the light of the amendments to anti-terrorism legislation (as a result of which press officials who violated the law could no longer be imprisoned), the link between the existence of the legislation and Article 1§2 of the Charter was more tenuous and as such did not give rise to a finding of non-conformity. It reserves the right, however, to take up this matter again in the future.

The Committee also asks whether there is legislation to combat terrorism (or incitement to terrorism) that explicitly bars individuals from certain occupations, and if so in which cases such legislation applies.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 1§2 of the Charter on the following grounds:

- there is an upper limit on compensation for discrimination in employment;
- restrictions on access of nationals of other States Parties to several categories of employment are excessive;
- the Commercial Code authorises the captain of a ship to use force to bring sailors back on board and hence ensure that the ship is run properly and discipline is maintained;
- the Martial Law, it is possible to suspend or transfer civil servants and local government employees because their work is not necessary.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion of M. T. AKILLIOGLU, member of the Committee, is appended to this conclusion.

Paragraph 3 – Free placement services

The Committee takes note of the information in the Turkish report.

It notes in particular that, according to the report, following the entry into force, in 2003, of Act No. 4904, the Turkish employment office, İŞKUR, has been transformed into a body which is more attuned to current labour market needs.

The Committee previously (Conclusions XVIII-1) found that the situation in Turkey was not in conformity with Article 1§1 as vacancy notification by employers to the employment services was subject to the payment of a contribution. In Conclusions XVIII-1, it took note of the information on the entry in force, as of January 2005, of a new law which eliminate the fee required by employers for a vacancy notification to the employment services. The Turkish delegate to the Governmental Committee had actually announced the adoption of this new law without indicating its reference (Detailed report on Conclusions XVIII-1). The present report does not provide any information on this issue. A letter was sent to the Turkish Government on 17 June 2008 to ask clarifications on this issue, but the latter has not replied.

The Committee therefore requests that the next report clarifies whether a fee is still requested from employers in case a vacancy is notified to the İŞKUR. Meanwhile, the Committee considers the situation is not in conformity with the Charter.

As regards the total number of vacancies, the report only gives figures which are outside of the reference period. The Committee asks for updated figures in the next report.

Furthermore, the placement rate figure that is given is calculated on the basis of the number of job "applications", not on notified job vacancies.

The Committee therefore repeats its request for information on:

- the placement rate, that is placements made by the public employment services as a percentage of the total number of persons recruited on to the labour market;
- the average time needed to fill a vacancy.

It repeats that this information is essential for it to gauge the true effectiveness of the employment services. If it does not appear in the next report, there will be nothing to show that the situation is in conformity with Article 1§3 of the Charter.

In order to assess the situation, the Committee asks for the next report to provide information on other performance indicators such as numbers of visits to, or contacts with, employers or the number of personalised action plans or counselling sessions offered by public employment services to unemployed persons.

It also notes the considerable gap between the total number of unemployed (2 520 000 in 2005) and the number of unemployed persons registered with the public employment services (846 188 in November 2005). The Committee asks for the government's comments on this.

As regards the private placement services, whose activity is performed under Law No 4857, entry in force on 10 June 2003, they can do so after having received a licence from the İŞKUR. According to the report, the

Labour Inspection, which is linked to the İŞKUR, supervises the activities of these agencies. 79 agencies were registered in 2005.

The Committee asks for information on the success of the co-ordination between the İŞKUR and private placement agencies.

According to the report, the İŞKUR is made up of 79 members, including 46 representatives of workers' and employers' organisations, which take part in the management of the agency and the local branches that have recently been set up, as well as sitting in its management board. The Committee asks for details in the next report on the total number of staff, and the qualification levels, working for the public employment services.

Conclusion

The Committee concludes that the situation is not in conformity with Article 1§3 of the Charter on the ground that vacancy notification by employers to the employment services is subject to the payment of a fee.

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee takes note of the information provided in Turkey's report.

Under Article 1§4 of the Charter, the Committee considers vocational guidance, continuing training and the rehabilitation of persons with disabilities.

Turkey has accepted Articles 9 (right to vocational guidance) and 10§3 (right of workers to continuing vocational training) of the Charter so the Committee refers to its conclusions under these provisions.

In these conclusions it has found that the situation regarding the right of adult workers to continuing vocational training (Article 10§3) is in conformity with the Charter. The Committee concludes that the situation regarding vocational guidance (Article 9) is not in conformity with the Charter on the ground that it has not been established that the right to vocational guidance in the education system is guaranteed.

The Committee is only concerned here with guidance and training for persons with disabilities, because Turkey has not accepted Article 15§1 of the Charter. Under Article 1§4, the Committee considers the following issues with regard to the guidance, education and training of persons with disabilities

- the existence on the labour market of vocational guidance and training services for employed and unemployed persons and of guidance and training aimed specifically at persons with disabilities;
- access: recipients of these services;
- the existence of legislation explicitly prohibiting discrimination on the ground of disability in the field of training.

Vocational guidance for persons with disabilities

The Disabled Persons Act, No. 5378, which came into force on 7 July 2005, and its implementing regulation of 31 May 2006 provide for disabled persons to receive vocational guidance from the institutions of the national employment agency (İŞKUR).

According to the report on Article 1§1, in 2005, persons with disabilities accounted for 12.29% of the total population and 23,317 of them had been placed in the labour market. The Committee asks for the total number of disabled persons of working age.

In the absence of a reply in the report, the Committee asks for the geographical breakdown of vocational guidance services. It also asks how many persons with disabilities have actually received vocational guidance.

Continuing vocational training for persons with disabilities

Disabled persons who are already employed are eligible for continuing vocational training from public training centres and vocational schools run by the ministry of education. In planning courses, account is taken of persons' interests, their skills and their needs. In 2005, 1,710 disabled persons received such training. In 2006, the figure was 3,047.

The Committee asks for up-to-date information in the next report on the number of persons with disabilities awaiting vocational training, to enable it to determine whether supply matches demand.

A vocational rehabilitation project know as "Rainbow", offering vocational training to disabled persons, started on 4 March 2006 and will operate in 30 industrial towns and cities. It sets out to enable those concerned to obtain the necessary occupational qualifications and skills for work and will give them access to placement

services. The employment agency is then responsible for placing those who have successfully completed the course in work. The Committee asks for information in the next report on how the project has progressed.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right to vocational guidance in the education system is guaranteed.

Article 9 – The right to vocational guidance

The Committee takes note of the information provided in Turkey's report.

As Turkey has accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with under that provision.

Vocational guidance within the education system

a. Functions, organisation and operation

In schools, guidance counselling is provided free of charge through individual interviews or group activities (conferences or seminars).

In reply to the Committee, the report states that the Ministry of Education has issued a circular (No. 2007/30) on promoting guidance in vocational and technical training with a view to improving vocational guidance services. Work on reorganising the secondary education system began in the 2005/2006 academic year and the time-span of secondary education has been increased to four years. Guidance services will have to be adapted to the new system. The Committee asks for the next report to provide information on any improvements made.

Act No. 5378 on disabled persons came into force on 7 July 2005 and its implementing regulation of 31 May 2006 makes provision for persons with mental or physical disabilities to be offered vocational guidance by the institutions of the Ministry of Education (MONE) or the national employment office (İŞKUR). Pupils with disabilities are entitled to educational advice from specialists in special schools or other institutions. In higher education, student consultation and co-ordination centres are equipped to deal with students with disabilities. The report states, however, that in practice, few people with disabilities can take advantage of these services because of the overall lack of resources and the necessary equipment for these people in education institutions. The Committee asks for the next report to describe any measures taken to increase the number of beneficiaries.

b. Expenditure, staffing and number of beneficiaries

The Ministry of Education finances guidance services in schools and other education institutions. Total public spending on vocational guidance services amounted to 1% of the total education budget in 2005 and 1.8% in 2006.

12,661 psychological counsellors work for the guidance services in primary and secondary education.

In 2005, 1,645 guidance sessions were held in 646 classes and were attended by 68,207 pupils and 291 parents. There were 1,022 workplace visits involving 142 different professions. In 2006, 2,124 guidance sessions were held in 601 classes and attended by 67,223 students. There were 1,425 workplace visits.

In its previous conclusion (Conclusions XVIII-2), the Committee noted a considerable decline in the number of beneficiaries of vocational guidance in the education system (from 14.9 million in 2001 to 6.4 million in 2004). According to the report, the reasons for this are a lack of staff at guidance centres, the fact that vocational guidance is no longer provided in the first to the fifth year of primary school, the fact that publicity campaigns were not entirely successful and the lack of public awareness of vocational guidance activities. The report states, however, that increases in specialised staff and the number of activities proposed should enhance public awareness and increase the number of beneficiaries.

This decline was clearly confirmed in 2005, when there were only 68,207 beneficiaries. Despite the reasons given in the report, the Committee considers that the situation in Turkey is not in conformity with the Charter on this point because it has not been shown that there is a guaranteed right to vocational guidance in the education system.

The report states that in 2005, 1,710 people with disabilities were given vocational guidance.

Vocational guidance in the labour market

a. Functions, organisation and operation

Vocational guidance in the labour market is provided free of charge by the relevant services of the national employment office (İŞKUR). They are aimed at young and adult workers, jobseekers and people wishing to change jobs or be given a promotion.

The Committee notes the various measures taken by the İŞKUR during the reference period to improve its guidance services. It notes, in particular, that a committee called the MEDAK has been appointed to establish career information and guidance standards, that there is an ongoing programme entitled "Development of Industrial Experience" which facilitates co-operation with the labour market, and that the İŞKUR has signed a co-operation protocol on vocational information and guidance with various non-governmental organisations.

b. Expenditure, staffing and number of beneficiaries

The İŞKUR has 3,415 permanent guidance counsellor posts, but only 2,437 of these are occupied while 978 are vacant. Counsellors must have a university degree.

In 2005, 55,912 people were given vocational guidance in the 41 career counselling centres spread over 38 provinces. In 2006, there were 121,295 beneficiaries.

The Committee asks for the next report to provide information on the budget allocated to vocational guidance services in the labour market.

Dissemination of information

Information is available on the Internet and seminars and conferences are held to raise awareness of the guidance services that are available. 342 seminars were held in 2005 and 434 in 2006.

Information packs and CDs are available free of charge at career counselling centres. A special telephone line provides a direct link between employers and jobseekers.

Equal treatment of nationals of the other States Parties

The Committee notes that there has been no change in the situation which it previously considered (Conclusions XVI-2) to be in conformity.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 9 of the Charter on the ground that it has not been established that the right to vocational guidance in the education system is guaranteed.

Article 10 – The right to vocational training

Paragraph 1 – Technical and vocational training and the granting of facilities for access to higher technical and university education

The Committee takes note of the information provided in Turkey's report.

Secondary and higher education

In its previous conclusions (Conclusions XVIII-2), the Committee took note of the organisation and functioning of secondary and higher education system and found that it was in conformity with the Charter.

In its previous Conclusion the Committee asked how the legal framework which came into force in 2002, namely the Regulation No 24762 on Higher Vocational Education was applied in practice. In reply the Committee notes from the report that all universities have arranged for a system whereby they send students to workplaces to apply the knowledge they acquire. At the end of the training the student performance is evaluated by the training evaluation commission and is registered in the student's transcript. This system helps ensure that higher education qualifications are relevant from the perspective of professional integration into the job market.

Finally, the Committee repeats its request for statistics on the proportion of graduates who find employment.

The Committee notes from the report that the drafting of the legislation for creation of the National Professional Qualifications Agency whose aim will be to develop and maintain the system of professional standards, examinations and certification, is underway. The Committee wishes to be kept informed about these developments.

Measures to facilitate access to education and their effectiveness

The Committee notes that in certain educational programmes there still are vacant places and repeats its question what concrete measures are implemented in the framework of the Law No. 4702 to fill these places.

The report states that Turkey has earmarked 47,400,000 Turkish lira (YTL; € 24 million) in support of activities for promoting vocational and technical training.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 10§1 of the Charter.

Paragraph 2 – Apprenticeship

The Committee takes note of the information provided in Turkey's report.

The Committee has already examined the apprenticeship system and found that the situation was in conformity with the Charter. It further notes from the report that in 2006-2007, 178,279 apprentices participated in the training courses held at 305 vocational training centres affiliated to the General Directorate of Apprenticeship and Non-Formal education.

Having found no reply to its previous conclusion concerning the statistics on the number of persons with disabilities in apprenticeships, the Committee reiterates its question.

According to the report the equality of treatment as regards access to apprenticeship is provided to nationals of other States Parties legally resident or regularly working in Turkey.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation is in conformity with Article 10§2 of the Charter.

Paragraph 3 – Vocational training and retraining of adult workers

The Committee takes note of the information provided in Turkey's report.

Employed persons

The Committee took note of the situation concerning vocational training for employed persons in its last conclusion (Conclusions XVIII-2). It asked whether there was legislation authorising individual leave for training and, if so, under what conditions and on whose initiative, how long it lasted and in which cases it was paid. It also requested information on how the cost of vocational training was shared between public bodies. In

reply the Committee notes from the report that Article No 247 of the Regulation on Vocational and Technical Education stipulates that at the initiative of an employer educational leave can be taken at education centres belonging to the public and private establishments and institutions. Time spent in training will count as normal working hours.

As regards Committee's second question, the report states that vocational training costs are covered by unemployment insurance fund according to Article No 53 of the Code on Unemployment Insurance. Besides, the state finances the insurance premium for employed persons in training. The employer pays not less than 30% of the minimum wage.

Unemployed persons

The Committee notes from Eurostat that the unemployment rate in Turkey amounted to 8.8% in 2005 and to 8.4% in 2006. According to the report various labour force education courses were organised in 2006. In the framework of 246 training courses entitled 'guaranteed employment courses' 5,025 persons were trained and found an employment afterwards. 6,082 disabled persons took part in special courses and 3,768 persons participated in the courses organised within the scope of unemployment insurance. The Committee asks what percentage of all participants in various training courses found a job afterwards.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 10§3 of the Charter.

Paragraph 4 – Facilities

The Committee takes note of the information provided in Turkey's report.

Fees and financial assistance (Article 10§4 a and b)

In its previous conclusion (Conclusions XVIII-2) the Committee asked for up-to-date information on the level of grants for higher education. In reply the report states that 576,119 students have been awarded an education grant in 2007. The amount of the education grant is index-linked and in 2007 it amounted to € 76 for undergraduate students, € 152 for graduate students and € 228 for postgraduate students. According to the report there is an additional means-tested grant to offset university fees. 540,860 students have been awarded this grant in the same academic year. Besides, a means-tested support is given to students by waiving their dormitory costs. There are also merit-based private scholarships paid to students who demonstrate outstanding achievements at entrance exams. The Committee recalls (Conclusions VIII) that within the meaning of Article 10§4 of the Charter access to vocational training, including higher education also covers the granting of financial assistance whose importance is so great that the very existence of the right to such training may depend on it. States must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. In any event, the assistance should at least be available for those in need and should be adequate (Conclusions XIII-1).

Having taken note of the information concerning the system of financial aid, the Committee, however, asks whether the existing system of financial aid, including various types of grants allows students from low-income families to sufficiently cover their expenses relating to higher education.

As regards vocational and technical secondary education, there are scholarships paid to 5,151 students at the amount of € 30 per month. This scholarship is means-tested and is awarded to those whose family income is below certain threshold.

Training during working hours and efficiency of training (Article 10§ 4 c and d)

The Committee notes from the report that the social partners are involved in evaluating the efficiency of apprenticeship and vocational education systems as stipulated by Article 41 of the Vocational Education Code.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 10§4 of the Charter.

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

Paragraph 1 – Applying existing regulations in a spirit of liberality

The Committee takes note of the information provided in Turkey's report.

Foreign population and migratory movement

The Committee notes from another source¹ that Turkey's migration statistics are based on estimates drawn from disparate sources and so it is difficult to gain a reliable picture of the situation. Setting aside this reservation, it is estimated that over 60,000 people migrated illegally to Turkey in 2004, which was an increase in 9% over the 2003 figure, but a decrease compared to the record figure of 2000, when it is estimated that some 95,000 people migrated illegally.

Work permits

The Committee notes that a new law, Act No. 4817 of 27 February 2003 on work permits for foreign nationals, which came into force along with its implementing regulation on 6 September 2003, now governs foreigners' employment conditions. Under these laws and Residence and Movement of Aliens Act No. 5683, foreign nationals wishing to engage in a gainful occupation in Turkey are required in principle to obtain a work permit and a residence permit. The new act provides for three categories of work permit, a fixed-term work permit (issued for an initial period of one year but extendable to up to six years), an unlimited-duration work permit and a self-employed person's work permit.

The Committee notes that it is possible to derogate from the provisions of the new law by virtue of the principle of reciprocity, international legal standards or European Union law. Nationals of States which have negotiated bilateral or multilateral agreements involving Turkey may be exempted from the requirement to obtain a work permit. The Committee asks for a list of the States Parties whose nationals are covered by such derogations or exemptions.

Relevant statistics

The Committee notes that 43,000 applications for work permits were made between 6 September 2003, when the new legislation came into force, and 30 June 2007, and that 8,000 of these were rejected or withdrawn. According to the statistics provided, there was an increase in the number of permits granted, as 10,603 were granted in 2006, compared to 9,438 in 2005 and 7,302 in 2004. The figure was 5,205 for the first half of 2007 alone. The Committee infers from this that over the period referred to above, of the approximately 43,000 applications lodged, 33,403 were granted, and hence the rejection rate was 22%.

The Committee recalls that its assessment of the degree of liberality, requires figures showing refusal rates for both work permits for first-time and renewal applications by nationals of States Parties (Conclusions XVII-2, Spain). Although the figures for renewal applications are not available, given the low rate of rejection of first-time applications, the Committee concludes that the situation is in conformity with Article 18§1 of the Charter. However, it would like statistics to be included in the next report on work permits requested, issued, refused and renewed for all nationals of States Parties.

The Committee notes that both a work permit and a residence permit are required to engage in a gainful occupation and the procedures for issuing these permits are not interdependent. On this point it refers to its conclusion under Article 18§2 of the Charter. The Committee therefore asks for the next report to provide statistics on the number of residence permits issued on the basis of a work permit.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 18§1 of the Charter.

Paragraph 2 – Simplifying formalities and reducing dues and taxes

The Committee takes note of the information provided in Turkey's report.

¹ Trends in International Migration, OECD, Sopemi, 2006 edition.

Administrative formalities

Issue of work permits

Paid employment

Foreign workers may submit their applications for work permits to the Turkish diplomatic or consular representation in their country of origin or residence, which will forward them to the Ministry of Labour and Social Security. If the permit is granted, the foreign worker is required to apply for an entry visa to Turkey within 90 days and for a residence permit from the Ministry of the Interior within 30 days of entering the country.

If the foreign worker is already residing legally in Turkey and hence already has a residence permit, provided that it is still valid for a further six months or more, he or she or his or her employer may apply for a work permit directly from the Ministry of Labour and Social Security.

Self-employment

To be entitled to engage in a self-employed activity, foreign nationals are required to have been legally resident in Turkey for an uninterrupted period of five years. On this point the Committee refers to its conclusion under Article 18§3. Under Article 41 of the implementing regulation for Act No. 4817, foreigners are initially given an official receipt of their application for a work permit for a self-employed activity, which is valid for three months. It is only once they have actually begun their activity and registered it with the Chamber of Commerce that they are granted a full work permit for self-employed activity.

Renewal conditions

The Committee notes that foreign workers or their employers may apply for the renewal of their work permits to the Ministry of Labour and Social Security before the initial permit expires or at the latest fifteen days after it expires. If these deadlines are not met, a new procedure restarts and the rules relating to the issue of a first work permit are applied.

Work and residence permits

The Committee points out that foreign nationals wishing to engage in a gainful occupation in Turkey must obtain a work permit and a residence permit. On this point the Committee refers to its conclusion under Article 18§1 of the Charter.

In its previous conclusions, the Committee concluded that the situation was not in conformity with Article 18§2 of the Charter because there were two separate application procedures for work and residence permits. Under Act No. 4817, described above, applications for work permits have to be made to the Ministry of Labour and Social Security while applications for residence permits have to be submitted to the Ministry of the Interior.

The Committee notes that there was no change in this situation during the reference period. Neither does the report answer the question it put in the previous conclusions regarding the possible interrelation of the two procedures. Given these circumstances, the Committee has no choice but to reiterate its conclusion of non-conformity.

Waiting times

Applications for work permits to be issued or renewed must be examined and processed by the Ministry of Labour and Social Security within 90 days at most. The Committee considers this to be a reasonable waiting time for foreign nationals already residing lawfully in Turkey. It points out, however, that foreign nationals who make their application from their country of origin have to complete additional formalities (i.e. obtain an entry visa and then a residence permit) before being legally entitled to work. In this connection, the Committee asks within what times the authorities are required to process entry visa and residence permit applications.

Chancery dues and other charges

According to the report, fees for the issue and renewal of work permits are set by tariff scale no. 6, which is appended to the Fees Act. In 2007, the fee was 85 Turkish lira (TRY, which is about € 44). Bearing in mind that a residence permit is also required to engage in a gainful occupation, the Committee asks for the next report to provide information on the fees for residence permits.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 18§2 of the Charter on the grounds that there exists a dual application procedure for work and residence permits.

Paragraph 3 – Liberalising regulations

The Committee takes note of the information provided in Turkey's report.

Access to the national labour market

The Committee notes that work permits for employees are only granted in so far as the labour market situation, changes in working conditions, economic trends and sectoral developments allow. In its view, these are very general criteria which may give rise to arbitrary restrictions on access to the labour market for foreign nationals. The Committee asks for the next report to provide information on how these criteria are applied in practice.

The Committee points out that to be entitled to engage in a self-employed activity, foreign nationals are required to have been legally resident in Turkey for an uninterrupted period of five years. It notes that any such activity must contribute to Turkey's economic growth. The Committee considers that imposing a five-year residence requirement on foreign nationals wishing to engage in a self-employed activity constitutes a very significant restriction on access to the labour market. It asks whether there any plans to relax this requirement.

Exercise of the right to employment

The Committee points out that work permits are initially issued for a specific activity and a specific employer. The Ministry of Labour and Social Security may, however, broaden the geographical area in which the foreign national may perform his or her work.

The Committee also recalls that work permits are issued initially for a period of one year. At the end of this period, foreign workers may apply for the renewal of their permits for an additional period of two years provided that they stay with the same employer and engage in the same activity. It is only after three years and when applying for a second renewal – which may be granted for a further three years – that foreign workers may change employers provided that they remain in the same occupation.

The Committee would reiterate that a work permit of unlimited duration may be granted to a foreign national who has worked for a total of six years in Turkey or has resided there for at last eight years without interruption. Unlimited-duration work permits are valid for all occupations and all employers.

Some categories of foreigners, particularly EU nationals, may be granted a work permit without having to meet the length of work and residence requirements outlined above.

The Committee considers that legislation which forces foreign workers to work for the same employer for three years and in the same sector of activity for six years cannot be considered to be liberal within the meaning of Article 18§3 of the Charter.

Consequences of loss of job

The report does not answer the questions put in the previous two conclusions. The Committee asks again whether foreign workers whose residence permits expire after they have lost their jobs are entitled to an extension of their permit to give them enough time to look for a new job.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 18§3 of the Charter on the grounds that the regulations governing access to the national labour market and exercise of the right to employment are too restrictive.

Paragraph 4 – Right of nationals to leave the country

The Committee takes note of the information provided in Turkey's report.

Article 23 of the Turkish Constitution enshrines the principle of freedom of residence and movement, including the freedom of nationals to leave the country. This freedom may only be restricted because of civic obligations or for the purposes of a criminal investigation or prosecution. Furthermore, under Article 13 of the Constitution, fundamental rights and freedoms may only be restricted in accordance with the law and for reasons mentioned in the relevant provisions of the Constitution. Restrictions must not infringe on the very essence of rights and freedoms.

The Committee points out that under Article 22 of the Passport Act (No. 5682) a passport application can be rejected if the person concerned is prohibited by a court order from leaving the country or has failed to pay his or her taxes or if the Ministry of the Interior decides that he or she cannot be issued a passport for security reasons. In this connection, the Committee notes from another source¹ that, following a decision of the Constitutional Court of 8 November 2007 (outside the reference period), a passport application may no longer be rejected because the applicant has tax debts. It also notes that under Article 109 of the new Code of Criminal Procedure, where the conditions for detention pending trial are met, the courts may order one or more types of judicial supervision instead of detention, including prohibition from leaving the country. Under Article 111 of the Code, persons on which a judicial supervision measure is imposed may appeal.

The Committee also notes from another source² that the Ministry of the Interior has a discretionary power to reject passport applications for security reasons. However, the applicant may apply for the decision to be set aside; when ruling on the lawfulness of the decision, the administrative courts require evidence of specific facts which justify the decision to prohibit the applicant from leaving the country. For example, the Supreme Administrative Court ruled that a decision to refuse to issue a passport to a person who had been found to be involved in national and international drug trafficking was lawful.

The Committee considers that the aforementioned restrictions are among those that are admissible under Article 31 of the Charter. Bearing in mind that military service is compulsory in Turkey, it asks whether there are particular restrictions on the freedom to leave the country of people doing their military service.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 18§4 of the Charter.

¹ www.anayasa.gov.tr

² www.akader.info/KHUKA/2005_mart/42-52.pdf

Dissenting opinion of Mr T. Akillioglu

Conclusion relating to Article 1§2, Turkey

1. In my dissenting opinion in Conclusions XVI-1 in 2002 on the Committee's conclusion on Turkey's compliance with Article 1§2, I made the following points: "Emergency legislation grants exceptional powers which, by their nature, are incompatible with "defining the limits" clauses, in our case Article 31 of the European Social Charter. The Wording of the conclusion implies that although this legislation is still in force, it is not effective, in other words not applied. Supervision of Article 31 is only meaningful in the case of laws that are applicable, since if legislation is not applied it is not possible to assess its conformity with Article 31. Article 30, which gives the Government the right of derogation from Article 31, supports this thesis. It is impossible to know whether or not a government wishes to use its right of derogation before the emergency legislation in question is applied. In other words, the mere continuation in force of the contested legislation does not authorize the Committee to assess its compliance with Article 31, given the right of derogation granted in Article 30. (...) It has to be said that (...) the majority has renounced the principle of equality of treatment of countries – a valuable principle that has been respected since the Committee's inception – at Turkey's expense. Practically all the Contracting Parties to the Charter have emergency laws that are on the statute book but not applied. They all contain similar provisions, outside the scope of the normal law, that are presumably incompatible with Article 31".
2. Six years later, I note that the Committee has still not scrutinised emergency laws still on the statute books in other countries that might include provisions that are incompatible with the Charter. I therefore find it impossible to agree with the majority.